

1 deceased, and Seth Layton and Benjamin Bone -- that in
2 your report, and what was presented to you, was that
3 the trooper was driving 96 in a 65-mile-per-hour
4 zone --

5 A. While he was pacing the suspect vehicle.

6 Q. Okay. Correct.

7 A. Yes.

8 Q. And now, would you agree, would you not,
9 that based on that fact that the driver, of course, was
10 Trooper Layton --

11 A. Yes.

12 Q. -- and that in this case, he was, in
13 fact, doing more than the speed limit?

14 A. He was pacing the car at 97.

15 Q. And do you believe -- this section of
16 code indicates that -- and if you'll read Subsection
17 B --

18 A. Subsection B. You want me to read B,
19 ma'am?

20 Q. Part of it. I guess you don't need to
21 read all of it. Just read B-A. B, then all the way
22 through A.

23 A. "The exemptions granted to emergency
24 vehicles by Subsection A, in Subdivisions A1, A3, A4,
25 A5 and A6, shall apply when the operator of such

1 vehicle displays a flashing, blinking or alternating
2 emergency light or lights, as provided in Section
3 46.2-1022, and 46.2-1023, and the sounds of siren,
4 exhaust whistle or air horn, designed to give
5 automatically intermittent signals as may be reasonably
6 necessary. The exemption granted under Subdivision A2
7 shall apply only when the operator of such emergency
8 vehicle displays a flashing, blinking or alternating
9 emergency light or lights, as provided in section
10 46.2-1022 or 1023."

11 Q. That's fine. I think that covers it.
12 Now, you would agree then, would you not, that this
13 statute applied to Officer Layton in his driving?

14 A. The statute does, but not that section of
15 it.

16 Q. What section do you believe applies?

17 A. We go over this with our students. If
18 you look down to Section D. I will read that if
19 it's --

20 Q. Sure. Go ahead.

21 A. "Any law enforcement vehicle, operated by
22 or under the direction of a federal, state or local law
23 enforcement officer, may disregard speed limits while
24 having due regard for the safety of persons and
25 property; one, in the testing of accuracy of

1 speedometers of such vehicles; two, in the testing of
2 the accuracy of speed measuring devices specified in
3 46.2882; or, three, in following another vehicle for
4 the purposes of determining speed."

5 Q. What section -- you say this applies how
6 so?

7 A. Because he was pacing a vehicle to
8 determine his speed.

9 Q. But prior to pacing the vehicle, did he
10 not clock him on radar at doing 96 in a 65?

11 A. Yes, ma'am.

12 Q. So, he already knew the speed, did he
13 not?

14 A. By radar, but the speed may have --
15 because he was running stationary radar, so he wasn't
16 in moving mode. So once he pulls out to follow the
17 vehicle, it's possible that the vehicle's speed has
18 changed. So that gives him his initial probable cause.
19 So, if I'm not mistaken, Subsection A applies when
20 responding to an emergency. So, he wasn't responding
21 to an emergency. He was just pulling out to address a
22 violator.

23 Q. So, Subsection A indicates the driver of
24 any emergency vehicle, when such vehicle is being used
25 in the performance of public services, and when such

1 vehicle is operating under emergency conditions, may,
2 without subjecting himself to criminal prosecution --
3 and did you not think that when he clocks a vehicle at
4 doing 96 in a 65, that that's not an emergency
5 condition?

6 A. Not necessarily. I think --

7 Q. In this case?

8 A. Not in this case, no.

9 Q. You don't think it was?

10 A. To catch up to a speeder? Not generally,
11 no.

12 Q. So you think he was proper not having his
13 siren and lights on, in following this vehicle after
14 he's clocked doing 96?

15 A. Yes, ma'am. That's actually not
16 uncommon.

17 Q. Well, how do you know that?

18 A. I know that when I used to run radar,
19 which wasn't very often -- I wasn't much of a radar
20 guy, but when I ran radar -- when the other officers
21 ran radar and we caught somebody for speeding
22 violations, we would pull out and accelerate to catch
23 up to them. Not in all cases would we turn on
24 emergency equipment. If there was any reason for us to
25 suspect DUI, we might want to follow the vehicle

1 without them knowing we're behind them so that we could
2 observe other indicators as well. So there's a variety
3 of situations where officers would do that.

4 Q. And you indicated that your officers
5 didn't get on 64, on the highway?

6 A. Correct.

7 Q. Did they ever get up to speeds of 96 when
8 you thought it was reasonable for them not to have the
9 sirens and lights on?

10 A. I couldn't tell you how many of my
11 officers ever got up to that speed in a residential
12 area. I would like to think not many of them.

13 Q. Have you ever?

14 A. Yes.

15 Q. You have?

16 A. Not in a residential area. On the
17 interstate.

18 Q. But you have, on the interstate, 96
19 without your siren and lights on?

20 A. No, ma'am.

21 Q. So there was never a time when you were
22 at 96 without your sirens and lights on?

23 A. Not that I can recall. I was always
24 responding to an emergency or in a vehicle pursuit.

25 Q. Okay. And in that regard, when the

1 vehicles then got up to -- did you -- well, let's get
2 to that.

3 MS. ASKEW: Let's have that as an exhibit
4 then.

5 (Whereupon, Deposition Exhibit No. 3 was
6 marked.)

7 BY MS. ASKEW:

8 Q. Well, let me ask you this: This
9 scenario, the factual situation involving this case,
10 are you of the opinion that the officers are driving
11 96 -- we're at 96 now, 97 -- and pacing the vehicle
12 that was driven by Mr. Hill, was not dangerous?

13 A. There is a certain amount of danger
14 involved, but I don't know that the troopers, who have
15 training in driving at high speeds, were necessarily at
16 extreme risk at that point.

17 Q. Okay. What about when they said they got
18 up to 120 miles per hour?

19 A. The danger was increased.

20 Q. Now, did you read anything that gives you
21 any indication as to why Trooper Layton, who was
22 driving, did not -- when he pulled behind the vehicle
23 that was driven by Mr. Hill -- what the reason was for
24 not immediately engaging the siren and lights?

25 A. Well, I could let you know that standard

1 police procedures -- what we recommend is that when you
2 pull up behind the violator, that you call out the
3 vehicle information first before you turn on your
4 emergency equipment to get them to pull over. If I
5 pull up behind them with my emergency equipment on and
6 I never get a chance to read the tag, if there's an
7 exchange of gunfire and somebody gets hurt, and then
8 the vehicle drives away, then we don't know who that
9 was. So we like for them to come up behind the
10 vehicle, get some vehicle information, transmit that
11 over the radio and turn on their emergency equipment.
12 We would actually tell our officers -- there were some
13 of them that were field training officers that would
14 pull the vehicle over first, and even make contact with
15 the driver before they marked out on the radio where
16 they were and who they were with. We would tell them
17 as a matter of agency policy and safety issue that we
18 didn't want them doing that.

19 Q. I'm sorry. What's the safety issue?

20 A. The safety issue is, if something happens
21 and the violator leaves, and you haven't called out a
22 vehicle description, tag information or anything else,
23 we don't know who was with you. We can't pursue the
24 violator because we don't know what we're looking for.
25 In this case, it was dark out. They pulled up behind

1 the vehicle. They were confirming their speed, which
2 is not unusual. They then started watching the vehicle
3 move over the line. They were observing now to see if
4 there were additional indicators of potential DUI.
5 Then at some point when they saw -- they believed they
6 had enough, they went ahead and called in the
7 information and activated their emergency equipment.
8 It appears pretty standard to me.

9 Q. So then, then you go on to say in part of
10 your summary, that Trooper Layton then activated his
11 siren and pursued the vehicle. Then based on what your
12 understanding is at that point, they have a license
13 plate number?

14 A. Yes.

15 Q. And then the trooper pursued the suspect
16 vehicle which accelerated to about 120 miles per hour?

17 A. Yes.

18 Q. And you think that was reasonable?

19 A. Do I think what was reasonable?

20 Q. The troopers going up to 100 miles per
21 hour in pursuing this vehicle?

22 A. Sure.

23 Q. And then you indicate, "The suspect began
24 to slow and pulled onto the right shoulder as if he
25 were going to stop. At this point, an arm is seen

1 making a motion out of the window of the driver's side
2 of the suspect's vehicle." Why is that important? Did
3 you have any information other than that there was some
4 arm?

5 A. No. That's an unusual motion and part of
6 an event to take place at that particular time. We
7 don't typically pull people over for speeding or during
8 a pursuit where they would unnecessarily and for no
9 reason put their arm out the window briefly in what
10 appeared to be a throwing motion. Even though we don't
11 know whether something was thrown or what the motion
12 meant, it was done for a purpose, and that unknown
13 purpose now raises suspicions in the mind of the
14 officers.

15 Q. But you didn't have no idea what that
16 was?

17 A. Correct. It's unusual.

18 Q. Just because you don't know? It was
19 unusual because they put their hand out the window?

20 A. During a pursuit with the lights off at
21 120 right as they're pulling over, that is correct,
22 yes.

23 Q. But when they pulled over, were they
24 doing 120?

25 A. Oh, no, of course not.

1 Q. Okay. Did they do it at 120, or had they
2 pulled over?

3 A. They couldn't see if he did it during 120
4 because he was further up, and the lights were not
5 shining on the vehicle to that extent.

6 Q. And where did you get the 120 from? The
7 officers?

8 A. Yes.

9 Q. So you had no independent review of
10 anything that said they were doing 120?

11 A. Just the officers' statements.

12 Q. I mean, isn't there someway, by looking
13 at the vehicle -- isn't there some kind of box that
14 determines what their speed is at a certain period?

15 A. I don't know what the State Police have
16 available to do that.

17 Q. But does the local police have any idea
18 of -- do you have trained officers to determine, by
19 looking at a vehicle after the fact, what the speed at
20 a certain period of time was, going --

21 A. I have not been involved in such
22 training, no, ma'am.

23 Q. So, you just don't know?

24 A. I don't know.

25 Q. "Made a sudden left turn across both

1 westbound lanes and attempted to U-turn. Then the
2 vehicle went beyond the left shoulder and slid down the
3 embankment so that the passenger side was up against
4 the treeline, and the vehicle was leaning downward
5 toward the passenger side. The driver continued to
6 spin the tires in a constant attempt to escape."

7 A. Yes.

8 Q. And this narrative is based on what?

9 A. The observations in the video.

10 Q. Let's pull up the video then.

11 (Ms. Benton exits the room.)

12 MR. BROWN: Can we go off the record for
13 a second?

14 MS. ASKEW: Yes.

15 (Off-the-record discussion.)

16 MS. ASKEW: All right.

17 BY MS. ASKEW:

18 Q. I will represent to you, Mr. Bartels,
19 that this is a video that was produced by defense in
20 this case. I'm going to let you see it.

21 (Video playing.)

22 MR. BROWN: Is the sound out?

23 MS. ASKEW: It comes on. They don't have
24 it on yet.

25 (Video playing.)

1 MR. BROWN: Is there a question, or are
2 you just going to have him watch it?

3 (Video playing.)

4 MS. ASKEW: Let's stop there.

5 BY MS. ASKEW:

6 Q. What is that to you -- that noise with
7 one of the officers?

8 A. I couldn't tell you.

9 Q. You can't tell what that is?

10 A. No, ma'am.

11 Q. Did it sound like a "woo-woo" (phonetic),
12 like they are enjoying the ride?

13 A. No. It sounds like there might be some
14 adrenaline.

15 Q. Adrenaline?

16 A. Yes, ma'am.

17 (Video playing.)

18 BY MS. ASKEW:

19 Q. Can you tell me when you see his hand so
20 we can mark where that is?

21 A. Yes.

22 Q. Okay.

23 A. Is it okay if I pause it where I see
24 that?

25 Q. Yes. Okay.

1 A. And I'll try to time it --

2 Q. So I can put it on the record.

3 A. I think I just missed it, so let me do
4 this --

5 Q. Okay.

6 A. May I try something?

7 Q. Sure. Do you want to slow it down?

8 A. That's what I was looking for.

9 MR. BROWN: Would it help if -- there's
10 some dust on there.

11 THE DEPONENT: Say again, sir?

12 MR. BROWN: The screen is covered in
13 dust.

14 THE DEPONENT: If we can get a tissue and
15 wipe it off, that might be a little helpful.

16 MS. ASKEW: Sure.

17 (Video playing.)

18 THE DEPONENT: Right there.

19 BY MS. ASKEW:

20 Q. Would you agree with me that he has
21 slowed and pulled over to the side of the road;
22 correct? Can you show on the video so we can --

23 A. The timestamp?

24 Q. The timestamp. It's at 4:29?

25 A. It's 4:29. I can't tell you how many

1 frames, but 4 minutes, 29 seconds.

2 Q. And you'll see where he is located on the
3 side of the road where he slowed, and it looks like
4 he's almost coming to a stop --

5 A. Almost, yes.

6 Q. Almost. And that's when you first see
7 his arm out the window?

8 A. Yes.

9 Q. Now, let's just leave it there for a
10 minute. I'm going to have other questions -- more
11 questions about that. And when you see his arm out the
12 window, you don't know what he is gesturing?

13 A. No.

14 MR. BROWN: Objection to form.

15 BY MS. ASKEW:

16 Q. Do you know what he's doing?

17 A. No, ma'am, but it's typical and regularly
18 taught that many suspicion factors can be entirely
19 legal on their own, but in context, a situation can
20 raise suspicions in an officer. It can make an officer
21 wonder what somebody is doing that other people don't
22 normally do at this particular point in time.

23 Q. All right. So, he slowed, pulled over to
24 the side, and he puts his arm out the window. So,
25 outside of that, everything is speculative; correct?

1 A. As far as?

2 Q. What he's doing.

3 A. Correct.

4 Q. As far as you know, he could be gesturing
5 to the police officers and letting them know that he's
6 going to turn the other way and stop.

7 A. I wouldn't have any reason to think that.

8 Q. You wouldn't have any reason to think
9 otherwise. It doesn't show you anything otherwise?

10 A. I respectfully disagree.

11 Q. Well, show me something that tells you
12 that he's doing something that's illegal?

13 A. I'm not saying he's doing anything
14 illegal with a hand motion, but it would tend to
15 suggest that if he's going to pull over, I think an
16 officer is more likely to reasonably infer that he may
17 be getting rid of some evidence before he stops.

18 Q. Right there, does it look like any
19 evidence is being -- have they found any evidence?

20 A. It's not clear enough to --

21 Q. Did they find any when they stopped?

22 A. Not that I'm aware of.

23 Q. Has anybody told you they found any?

24 A. No, ma'am.

25 Q. So, as far as you know, he could be